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No. 84-1598

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

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MOSE HOLLAND,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

---

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

---

# REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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May, 1985

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The Supreme Court unquestionably has jurisdiction to review by certiorari any case in a Court of Appeals, 28 U.S.C. §1254(1). Coleman v. Paccar Inc., 424

U.S. 1301, 1303 (1976). While the Court has expressed its disinclination to encourage piecemeal litigation, it will do so when the interlocutory order is fundamental to the further conduct of the case. United States v. General Motors Corporation, 323 U.S. 373, 377 (1945); Land v. Dollar, 330 U.S. 731, 734 (1947).

It is under such circumstances that Petitioner comes to this Court. Charged with the unlawful distribution and possession of cocaine, the order of the Second Circuit denying suppression of that evidence and Petitioner's incriminating admissions relating to it (A-2), invite Petitioner's conviction. Armed with the cocaine secured in Mose Holland's apartment and his admission of possession, the possibility of the Petitioner's acquittal is remote.

The reality of the case is such that the correctness of the Court of Appeals' decision should be reviewed at this juncture, before the Petitioner is subjected to proceedings which incur expense to the Government and expenditure of time and resources to the judiciary. Were the issue raised less significant, the equities might favor review subsequent to trial. However, given the irreconcilable conflict among the circuit courts of appeals as to an individual's expectation of privacy in commonly shared property, the matter should be resolved by the Court promptly. The Government will not be prejudiced by the delay necessitated and the finality of the Second Circuit's determination, insofar as it represents the ultimate appellate ruling on the legality of the evidence secured, mili-

tates in favor of Supreme Court review prior to prosecution.

This Court has given the concept of appellate finality a practical rather than a technical construction. Gillespie v. United States Steel Corporation, 379 U.S. 148, 152 (1964). That approach is properly applicable to this case and should defeat the Government's claim of prematurity.

## CONCLUSION

For these reasons, the writ of certiorari should be granted.

Respectfully submitted,

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